

HANSON BRIDGETT MARCUS VLAHOS & RUDY, LLP
KURT A. FRANKLIN - 172715
kfranklin@hansonbridgett.com
SARAH D. MOTT - 148597
smott@hansonbridgett.com
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

Attorneys for Defendants
HARVEST REDWOOD RETIREMENT RESIDENCE,
L.L.C., doing business as Redwood Retirement Residence,
RETIREMENT RESIDENCE, L.L.C.; and HOLIDAY
RETIREMENT CORP.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREATER NAPA FAIR HOUSING
CENTER, a California Not for Profit
Corporation, doing business as FAIR
HOUSING NAPA VALLEY, as an
individual entity only; RUBY DUNCAN,
an incompetent adult, by and through her
Guardian Ad Litem, MAE LOUISE
WHITAKER; and EVA NORTHERN, an
incompetent adult, by and through her
Guardian Ad Litem, NANCY
NORTHERN, each individually and on
behalf of individuals similarly situated;
NANCY NORTHERN, in her individual
capacity only; and MAE LOUISE
WHITAKER, in her individual capacity
only,

Plaintiffs,

v.

HARVEST REDWOOD RETIREMENT
RESIDENCE, L.L.C., doing business as
Redwood Retirement Residence;
REDWOOD RETIREMENT RESIDENCE
L.L.C.; and HOLIDAY RETIREMENT
CORP.,

Defendants.

No. C07-3652 MEJ

**OBJECTIONS TO DECLARATIONS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ISSUANCE OF PRELIMINARY
INJUNCTION**

Date: September 26, 2007

Time: 9:00 a.m.

Dept: Ctrm. 3, 17th Fl.

Judge: Hon. Phyllis J. Hamilton

1 Defendants Harvest Redwood Retirement Residence, LLC, Redwood Retirement
2 Residence, Redwood Retirement Residence LLC, and Holiday Retirement Corporation
3 (hereinafter "Defendants") hereby object to the admissibility of the following evidence presented
4 by Greater Napa Fair Housing Center, et al. (hereinafter "Plaintiffs") in connection with
5 Plaintiffs' Motion for Issuance of Preliminary Injunction, set for hearing on September 26, 2007
6 before this Court:

7 **(1) Declaration of Celestia Amberstone, Paragraph 4.**

8 The statement in paragraph 4 of the declaration that when declarant's father moved into
9 Redwood Retirement Residence "he thought he would be able to live at Redwood for the rest of
10 his life" lacks foundation and is not based upon personal knowledge. FRE 602.

11 **(2) Declaration of Nancy Northern, Paragraphs 9, 10, 11, 12, 15.**

12 The statement in paragraph 9 of the declaration that the "aide stated that Redwood had a
13 new policy that would not permit her to bring meals to the apartment every day" is an out-of-
14 court statement offered to prove the truth of the matter asserted. As such, it is inadmissible
15 double hearsay. FRE 802.

16 The statement in paragraph 10 of the declaration, "I informed them that my mother
17 wanted to continue to have her home health care aide pick up meal trays from the kitchen and
18 bring them to her room. The managers agreed that this arrangement could continue for some
19 unspecified period of time," contains out-of-court statements offered to prove the truth of the
20 matter asserted. As such, it is inadmissible hearsay. FRE 802.

21 The statement in paragraph 11 of the declaration that a home health care aide called
22 declarant "and stated that Redwood had prohibited her from picking up any additional meals for
23 [her] mother. She stated that Redwood had refused her breakfast tray, but that she had taken
24 some fruit from a holiday gift basket so that [her] mother could eat and her blood sugar would not
25 become dangerously low" contains out-of-court statements offered to prove the truth of the matter
26 asserted. As such, it is inadmissible hearsay and double hearsay. FRE 802.

27 The statement in paragraph 12 of the declaration, "I explained to [Redwood managers]
28 that it was uncomfortable for my mother to eat in the dining room because of her communication

1 impairments. I reminded them that my mother had eaten her meals in her room since she moved
 2 in without any problems. The managers agreed to permit the home health care aides to pick up
 3 additional food trays for a fee of \$5.00 per tray. I reluctantly agreed to pay the charges because
 4 the managers told me that my mother's meal trays would be discontinued if we did not agree to
 5 pay. I reiterated to the resident managers that I disagreed with the meal tray policy. The resident
 6 managers stated that implementing the meal tray policy was not their decision," contains out-of-
 7 court statements offered to prove the truth of the matter asserted. As such, it is inadmissible
 8 hearsay and double hearsay. FRE 802.

9 The statement in paragraph 15 of the declaration, "the home health care aides told me that
 10 the managers of Redwood had asked a number of residents to move out because they required
 11 assistance and could not live independently," contains an out-of-court statement offered to prove
 12 the truth of the matter asserted. As such, it is inadmissible hearsay and double hearsay. FRE 802.

13 **(3) Declaration of Salve Penales, Paragraphs 6, 7.**

14 The statement in paragraph 6 (sic) of the declaration, "[t]he other caregivers and I started
 15 bringing trays of food from the kitchen to the residents who were no longer allowed to eat in the
 16 dining hall. The first time the care givers had to pay \$5 cash to get trays from the kitchen even
 17 though the trays are taken to the residents' rooms, rinsed and returned by me or the other care
 18 givers," contains out-of-court statements offered to prove the truth of the matter asserted. As
 19 such, it is inadmissible hearsay. FRE 802. It also lacks foundation and is not based on personal
 20 knowledge. FRE 602.

21 The statement in paragraph 7 (sic) of the declaration that "some residents were told that
 22 they could no longer use the dining hall. I heard that after Marion Jacks choked and threw up in
 23 the dining room that she was told by the management that she would need to go to 'assisted
 24 living,' and that she could no longer use the dining hall. Charles Bryden was also told he could
 25 not eat in the dining hall after throwing up there" contains out-of-court statements offered to
 26 prove the truth of the matter asserted. As such, it is inadmissible hearsay. FRE 802.

27 **(4) Declaration of Thomas W. Thornton, Paragraphs 9, 11, 16, 18, 19.**

28 The statement in paragraph 7 of the declaration that declarant's mother's "home health

1 care aide started picking up meal trays from Redwood kitchen and helping [her] mother eat in her
2 apartment. The home health care aide then returns the tray and dishes to the kitchen” lacks
3 foundation and is not based on personal knowledge. FRE 602.

4 The statement in paragraph 9 of the declaration that David Hall stated to declarant that her
5 mother was being asked to move out, “because (1) she is incontinent; and, (2) on one occasion,
6 she momentarily left her apartment half-dressed. I explained to Mr. Hall that the care aides told
7 me that she mistakenly opened the door leading to the hall rather than the bathroom door on that
8 one occasion. I assured Mr. Hall that home health care aides were assisting my mother, and that
9 my mother posed no threat to herself, others, or Redwood property, ” contains out-of-court
10 statements offered to prove the truth of the matter asserted. As such, it is inadmissible hearsay
11 and double hearsay. FRE 802.

12 The statement in paragraph 11 of the declaration, “Redwood has never responded to my
13 request for a reasonable accommodation,” contains improper conclusions and argument in
14 violation of Local Civ. Rule 7-5(b).

15 The statement in paragraph 16 of the declaration, “they were served with a letter stating
16 that the 30-day notice was improper under the California Civil Code,” is an out-of-court statement
17 offered to prove the truth of the matter asserted. FRE 802. It also contains improper conclusion
18 and argument in violation of Local Civ. Rule 7-5(b) and lacks foundation and is not based on
19 personal knowledge. FRE 602.

20 The statement in paragraph 18 of the declaration that declarant’s mother’s “home health
21 care aides provided all the care that she needed” contains improper conclusion and argument in
22 violation of Local Civ. Rule 7-5(b).

23 The statement in paragraph 19 of the declaration that declarant’s mother’s physicians
24 “informed [her] that people with Alzheimer’s Disease like [her] mother need stable and familiar
25 living environments and the opportunities for social interaction that a building like Redwood
26 provides” contains an out-of-court statement offered to prove the truth of the matter asserted. As
27 such, it is inadmissible hearsay. FRE 802. It also contains improper conclusions and argument in
28 violation of Local Civ. Rule 7-5(b).

1 **(5) Declaration of Priscilla Valencia, Paragraphs 3, 4, 6, 7**

2 The statement in paragraph 3 of the declaration that acting managers at Redwood's
3 corporate office "said that they had come to Redwood to temporarily manage the facility. They
4 stayed between July and October 2006. One of them was a woman named 'Irene,' who said she
5 was a registered nurse from the corporate office. While Irene was there, Irene interviewed most
6 of our clients, looking for detailed information about their health and medical conditions"
7 contains out-of-court statements offered to prove the truth of the matter asserted. As such, it is
8 inadmissible hearsay and double hearsay. FRE 802. It also lacks foundation and is not based on
9 personal knowledge. FRE 602.

10 The statement in paragraph 4 of the declaration, "several of my care givers told me that
11 some of our clients with disabilities had heard that they would be asked to leave Redwood. The
12 care givers told me that many Redwood residents began to express fears about being evicted
13 because they were 'too disabled,'" contains out-of-court statements offered to prove the truth of
14 the matter asserted. As such, it is inadmissible hearsay and double hearsay. FRE 802. It also
15 lack foundation and is not based on personal knowledge. FRE 602.

16 The statement in paragraph 6 of the declaration, "[f]or the first day of the new tray rule
17 Redwood staff delivered the trays, after that first day my care givers were told to take the trays,
18 and Redwood would not deliver them anymore," contains an out-of-court statement offered to
19 prove the truth of the matter asserted. As such, it is in admissible hearsay. FRE 802. It also
20 lacks foundation and is not based on personal knowledge. FRE 602.

21 The statement in paragraph 7 of the declaration, "I was told by a care giver that Dorman
22 Mitchell was seen crying in the lobby. I went to see Mr. Mitchell, and asked why he was crying.
23 Mr. Mitchell told me he was crying because David Hall told him that he had to leave Redwood.
24 Mr. Mitchell said he was sad because he did not want to leave, and had nowhere to go," contains
25 out-of-court statements offered to prove the truth of the matter asserted. As such, it is
26 inadmissible hearsay and double hearsay. FRE 802. It also lacks foundation and is not based on
27 personal knowledge. FRE 602.

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1 **(6) Declaration of Mae Louise Whitaker, Paragraphs 9, 11, 13, 14.**

2 The statement in paragraph 9 of the declaration that the declarant “heard from other
3 tenants that the new managers at Redwood had begun to pressure residents to move out if they
4 could no longer use the common dining room or did not otherwise fit the managers’ definition of
5 ‘active, independent’ seniors” contains out-of-court statements offered to prove the truth of the
6 matter asserted. As such, it is inadmissible hearsay and double hearsay. FRE 802. It also lacks
7 foundation and is not based on personal knowledge. FRE 602.

8 The statement in paragraph 11 of the declaration, “Denise Hall, one of the new managers,
9 told me that my mother would have to move out if she continued to be unable to take meals in the
10 dining room. I pointed out to them that in-home meal trays did not pose any extra burden or
11 expense for Redwood, since my mother’s home health aide picks up and returns the trays and
12 dishes to the kitchen. I also asked for reimbursement for the meals my mother was not able to eat
13 as a result of this policy,” contains out-of-court statements offered to prove the truth of the matter
14 asserted. As such, it is inadmissible hearsay. FRE 802.

15 The statement in paragraph 13 of the declaration, “I contacted Denise Hall, of the on-site
16 managers to express my concern about the number of residents with disabilities who were facing
17 eviction notices at Redwood,” contains an out-of-court statement offered to prove the truth of the
18 matter asserted. As such, it is inadmissible hearsay. FRE 802. It also lacks foundation and is not
19 based on personal knowledge. FRE 602.

20 The statement in paragraph 13 of the declaration, “Ms. Hall informed me that Redwood
21 maintained a list of tenants who ‘did not belong’ at Redwood and that the list included tenants
22 who use walkers and wheelchairs. She stated that Redwood was ‘weeding out’ the wheelchairs
23 and walkers because ‘they gave Redwood a bad impression,’” contains out-of-court statements
24 offered to prove the truth of the matter asserted. As such, it is inadmissible hearsay. FRE 802.

25 The statement in paragraph 13 of the declaration, “I told Ms. Hall that I was very
26 concerned my mother might be on the list. She stated that my mother was not on the ‘first’ list of
27 tenants who had to leave, but that she was on a ‘second’ list, and that I better start looking for
28 other housing for her because those on the second list would be asked to move out soon. When I

1 asked her why Redwood was evicting these people, she stated that the managers wanted Redwood
 2 to be a retirement home, like it used to be, rather than an 'old folks' home,'" contains out-of-court
 3 statements offered to prove the truth of the matter asserted. As such, it is inadmissible hearsay.
 4 FRE 802.

5 The statement in paragraph 14 of the declaration, "since she first became aware of the
 6 eviction notices Redwood issued to tenants with disabilities and Redwood's 'meal tray' policy,
 7 my mother lived in fear of eviction. She was afraid to leave her apartment and worried that, if she
 8 did go into the common areas, the managers would give her notice to vacate due to her visible
 9 disabilities," lacks foundation and is not based on personal knowledge. FRE 602. It also contains
 10 improper conclusion and argument in violation of Local Civ. Rule 7-5(b).

11 DATED: August 5, 2007

HANSON BRIDGETT MARCUS
 VLAHOS & RUDY, LLP

12 By: 

KURT A. FRANKLIN
 SARAH MOTT

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